No. 1[illegible]

In the Supreme Court of the United States

October Term, 1[illegible]

THE UNITED STATES, PETITIONER

v.

STONE & DOUGLAS, CO. AND LEWIS, DOUGLAS & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 150

THE UNITED STATES, PETITIONER

v.

STONE & DOWNER CO. AND LOWE, DONALD & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

STATEMENT

The respondents' motion to dismiss or affirm is based upon the following grounds (Resp. br. p. 2):

> 1. The Writ of Certiorari should be dismissed because the present respondents obtained a final judgment in their favor which has never been reversed nor modified, against the present petitioner in a prior suit, in which the present question was distinctly put in issue and directly determined by a Court of competent jurisdiction as a ground of recovery and can not be disputed in this second suit between the same parties.

2. The judgment of the Court of Customs Appeals should be affirmed because its correctness is conclusively established by its prior decision upon the same question and further argument is needless and can serve no purpose other than delay.

Respondents contend that the judgment of the Court of Customs Appeals in *Stone & Downer Co. et al.* v. *United States* (No. 2245), reported in 12 Ct. Cust. Appls. 62, operates by way of estoppel under the principle of *res adjudicata* to prevent the Government from having the issue reviewed in the present suit.

ARGUMENT

I

This motion is nothing more than an effort to obtain a rehearing of the petition for certiorari and a reconsideration by the Court of its action in granting the writ.

Respondents' argument in their brief on this motion, to the effect that an earlier case involving the same parties, the same questions, and importations of precisely similar merchandise, was decided adversely to the Government, is the same argument, supported by many of the same authorities, which was presented by them in their brief (Point I) in opposition to the Government's petition for a writ of certiorari.

II

The doctrine of *res adjudicata* has no application to the case at bar. It is a universal rule, long established in customs procedure, that each and every importation may become the subject of an independent action, and the rights of the parties in each instance become the subject of independent consideration and judgment by the courts.

Stone & Downer Co. et al. v. *United States*, 4 Ct. Cust. Appls. 47.

Beuttell & Sons v. *United States*, 8 Ct. Cust. Appls. 409, 410, 411, 421.

United States v. *Rice & Fielding, Inc.*, T. D. 40979, 47 Treas. Dec. 807, at 808.

United States v. *Hurst & Co. et al.*, T. D. 41584, 49 Treas. Dec. 853, 854.

Rule XXII of the Board of United States General Appraisers, T. D. 34210, 26 Treas. Dec. 316, 324, and T. D. 37772, 35 Treas. Dec. 106, at 113.

III

Respondents have not brought themselves within the provisions of paragraph 5 of rule 6 of the revised rules of this Court, adopted June 18, 1925, effective July 1, 1925, which permit motions to affirm writs or appeals on the grounds that "it is manifest that the writ or appeal was taken for delay only," or "that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument."

CONCLUSION

The motion in all respects should be denied.

Respectfully submitted.

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OCTOBER, 1926.

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